

**New Hampshire Supreme Court**

**October 26, 2006**

**ORAL ARGUMENT CASE SUMMARIES**

**CASE # 1**

**State of New Hampshire v. Smoke Signals Pipe & Tobacco Shop, LLC., No. 2005-0299**

Attorney Jonathan Cohen for the appellant, Smoke Signals Pipe & Tobacco Shop, LLC

Assistant Attorney General Nicholas P. Cort, for the appellee, State of New Hampshire

**Legal Issues Presented:**

- Is the legal definition of “drug paraphernalia” so vague that an average person would have to guess what it means and might have a difference of opinion about what it means?
- Was the trial judge wrong when he determined that the items seized from the shop were “drug paraphernalia” and therefore couldn’t be returned to the shop even when the shop was found not guilty of selling drug paraphernalia?
- Should the police detective involved have been permitted by the court to testify as an “expert?”

**Facts of the case**

In October 2001, the Dover Police Department, acting in part as a result of an investigation by the Attorney General’s Drug Task Force, executed a search warrant at Smoke Signals LLC, a shop on Main Street in Dover. Subsequently, the county attorney’s office charged Smoke Signals with selling drug paraphernalia. In January 2004, Smoke Signals pled guilty to one misdemeanor charge of selling drug paraphernalia and was fined \$1,000. The state agreed to return some of the seized objects to the shop so they could be sold including glass pipes (with and without “carburetors”), a green glass “chillim,” metal “one hitters” (which the state called “metal pipes”) and various glass water pipes.

Two months later, the Dover Police came back to the shop and seized some of the exact same objects that had been returned after the trial. The state said the objects were drug paraphernalia and new charges were brought. A non-jury trial was held and a judge found Smoke Signals not guilty of all

charges. The judge at the trial said since these were either the identical objects, or similar to the ones that the state gave back to Smoke Signals after the guilty plea, the shop couldn't be convicted of "knowingly" possessing drug paraphernalia.

Smoke Signals wanted the objects that had been seized returned, but the judge said no. The judge, who relied on expert testimony, said the objects were "drug paraphernalia."

The shop then filed this appeal with the Supreme Court.

### **Legal arguments**

New Hampshire law defines "drug paraphernalia" as objects that are "used or intended for use or customarily intended for use" in introducing a controlled substance into the human body. Smoke Signals argues that the phrase "customarily intended for use" is so vague that it could include every kind of pipe in the entire state. "Thus, ordinary people would have to guess which pipes are legal and which pipes are illegal," Smoke Signals contends in court records.

The lawyer for Smoke Signals argues that police officers could disagree about which kinds of pipes are illegal which could mean that the law would not be applied consistently. "This confusion is the result of the phrase 'customarily intended for use' which does not give enough guidance to law enforcement and courts to be constitutional," the lawyer for Smoke Signals contends.

Finally, Smoke Signals contends that the state breached the earlier plea deal it negotiated with Smoke Signals, which they contend allowed them to sell the objects the state had returned to them. Instead, Smoke Signals says, less than two months later, the State seized the same objects and prosecuted them again. They say the state should now either give back the objects, or throw out the misdemeanor conviction that resulted from the guilty plea.

The shop also argues that the detective who testified was not an expert on drug paraphernalia since he had rarely seen any drug use and had only seen about 50 people smoke marijuana. The detective, Kyle True, said basically, he knows drug paraphernalia when he sees it, but he never explained how he knew this, according to the lawyer for Smoke Signals.

While Detective True testified the objects were "drug paraphernalia" Smoke Signals says there was no evidence to back that up, such as drug residue, advertisements, or incriminating statements or records. Meanwhile, an expert for the defense had testified that she had sent clients to Smoke Signals to purchase both medicinal herbs and glass water pipes for legal purposes.

The court concluded that True's opinions were based on his experience as a police officer, that his testimony could assist the judge in understanding the evidence and therefore could be admitted at the trial. True testified he had investigated about 150 drug cases undercover.

The state, meanwhile, contends that the judge's finding that the county attorney had failed to prove beyond a reasonable doubt that the defendant

knowingly sold drug paraphernalia, does not mean that the objects involved were not drug paraphernalia.

On the Shop's claim that the law is "unconstitutionally vague," the state points out that the Supreme Court has said in another case that a law does not have to be mathematically precise to be valid, that it needs to be read in the context of other laws and that "commonsense" should be used when trying to decide if a challenge to that law should be upheld. In addition, the state says, New Hampshire law includes a specific list of 11 items that could be identified as drug paraphernalia.

As to the expert testimony, the state contends that the question of whether the objects seized from the shop were "customarily used" to ingest illegal drugs does not require technical or scientific expertise. Rather, the state argues, this case "does involve specialized knowledge as to what is customary." Detective True, who has been investigating drug cases since 2000 and has extensive experience in the field, is, the state contends, therefore qualified as an expert in this context.

As to the previous guilty plea, the state contends that they never said they wouldn't prosecute the shop for any item later found to be drug paraphernalia, which is what happened in the second case.

***This summary was prepared by the Court Communications Office, State of New Hampshire, Judicial Branch. 09/27/06***